

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

KARL LAWRENCE KINGMAN,	:
Petitioner,	:
v.	: Civil Action No. 00-227J
SUPERINTENDENT RAYMOND SOBINA,	:
S.C.I. SOMERSET,	:
Respondent	:

MEMORANDUM ORDER

This matter was referred to Magistrate Judge Keith A. Pesto for a Report and Recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and subsections 3 and 4 of Local Rule 72.1 for Magistrate Judges.

The Magistrate Judge filed a Report and Recommendation on June 8, 2006, docket no. 17, recommending that the petition for a writ of habeas corpus be denied as untimely, and that the claims be rejected as procedurally defaulted. The Report and Recommendation also recommended that one claim of ineffectiveness by trial counsel (for failing to preserve a challenge to the weight of the evidence) be rejected on the merits. The Report and Recommendation also recommended that a certificate of appealability be denied.

The parties were notified pursuant to 28 U.S.C. § 636(b)(1), that they had ten days to serve and file written objections to the Report and Recommendation. Petitioner filed timely objections, docket no. 18, on June 22, 2006. I have reviewed the objections. I accept petitioner's claim that his heart condition constituted grounds for equitable tolling, and so do not dismiss the petition as untimely. I do, however, adopt the Report

and Recommendation insofar as it rejects petitioner's claims as defaulted and on the merits. The new ineffectiveness claim petitioner attempts to raise in the objections (that trial counsel should have investigated the complainant's injury caused while riding a bicycle) is both untimely and procedurally defaulted.

After de novo review of the record of this matter, the Report and Recommendation, and the timely objections thereto, the following order is entered:

AND NOW, this 30th day of June, 2006, it is

ORDERED that the petitioner's petition for a writ of habeas corpus is denied. A certificate of appealability is denied. The Report and Recommendation is adopted as the opinion of the Court. The Clerk shall mark this matter closed.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Kim R. Gibson", written over a horizontal line.

KIM R. GIBSON,
UNITED STATES DISTRICT JUDGE

Notice to:

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